

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
) No.: 1:09-CR-123
v.)
) Collier/Lee
GINGER WIGGINS)
)
Defendant.)

ORDER

Magistrate Judge Susan K. Lee filed a report and recommendation recommending the Court:

(1) grant Defendant Ginger Wiggins's ("Defendant") motion to withdraw her not guilty plea to Count One of the Indictment; (2) accept Defendant's plea of guilty to the lesser included offense of the charge in Count One, that is of conspiracy to manufacture, distribute, and possess with the intent to distribute fifty (50) grams or more of a mixture and substance containing a detectable amount of methamphetamine in violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1)(B); (3) adjudicate Defendant guilty of the lesser included offense of the charge in Count One, that is of conspiracy to manufacture, distribute, and possess with the intent to distribute fifty (50) grams or more of a mixture and substance containing a detectable amount of methamphetamine in violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1)(B); (4) defer a decision on whether to accept the plea agreement until sentencing; and (5) find Defendant shall remain in custody until sentencing in this matter (Court File No. 213). Defendant filed a timely objection to the report and recommendation, objecting insofar as the magistrate judge revoked Defendant's bond and recommended she remain in custody until the sentencing of this matter (Court File No. 214).

Under 18 U.S.C. §§ 3143(a)(2) and 3142(f)(1)(C), the Court is required to order a defendant detained while awaiting sentencing, if that defendant has been found guilty of “an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 *et seq.*).” § 3142(f)(1)(C). The only exception is when “an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person” and the Court “finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.” § 3143(a)(2).

In this case, Defendant pleaded guilty to the lesser included offense of conspiracy to manufacture, distribute, and possess with the intent to distribute fifty (50) grams or more of a mixture and substance containing a detectable amount of methamphetamine in violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1)(B). This offense carries a statutory range of five to forty years of imprisonment. § 841(b)(1)(B); *see also* § 846 (assigning same penalties for a conspiracy as assigned to the underlying offense). Therefore, Defendant falls under the requirements stated above. Because no attorney from the Government has recommended that no sentence of imprisonment be imposed, the exception to § 3143(a)(2) does not apply. For this reason, the magistrate judge properly revoked Defendant’s bond and recommended she remain in custody until the sentencing of this matter.

After reviewing the record, the Court agrees with the magistrate judge’s report and recommendation, including the portion objected to by Defendant. Accordingly, the Court **ACCEPTS** and **ADOPTS** the magistrate judge’s report and recommendation (Court File No. 213) pursuant to 28 U.S.C. § 636(b)(1) and **ORDERS** as follows:

- (1) Defendant’s motion to withdraw her not guilty plea to Count One of the Indictment is **GRANTED**;

- (2) Defendant's plea of guilty of the lesser included offense of the charge in Count One, that is of conspiracy to manufacture, distribute, and possess with the intent to distribute fifty (50) grams or more of a mixture and substance containing a detectable amount of methamphetamine in violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1)(B) is **ACCEPTED**;
- (3) Defendant is hereby **ADJUDGED** guilty of the lesser included offense of the charge in Count One, that is of conspiracy that is of conspiracy to manufacture, distribute, and possess with the intent to distribute fifty (50) grams or more of a mixture and substance containing a detectable amount of methamphetamine in violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1)(B);
- (4) A decision on whether to accept the plea agreement is **DEFERRED** until sentencing; and
- (5) Defendant **SHALL REMAIN** in custody until sentencing in this matter which is scheduled to take place on **February 25, 2010 at 2:00 p.m.** before the Honorable Curtis L. Collier.

SO ORDERED.

ENTER:

/s/
CURTIS L. COLLIER
CHIEF UNITED STATES DISTRICT JUDGE